

DEPOSITION OF CLARENCE MOSES

MARCH 17, 2006

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIK A. POWELL,) Civil No.
THROUGH PERSONAL REPRESENTATIVE) CV04-00428 LEK
MARY K. POWELL; THE ESTATE OF)
JAMES D. LAUGHLIN, THROUGH PERSONAL)
REPRESENTATIVE RAGINAE C. LAUGHLIN;))
MARY K. POWELL, INDIVIDUALLY;)
RAGINAE C. LAUGHLIN, INDIVIDUALLY;)
CHLOE LAUGHLIN, A MINOR, THROUGH)
HER NEXT FRIEND, RAGINAE C.)
LAUGHLIN,)
Plaintiffs,)
vs.)
CITY AND COUNTY OF HONOLULU,)
Defendant,)
and)
CITY AND COUNTY OF HONOLULU,)
Third-Party Plaintiff,)
vs.)
UNIVERSITY OF HAWAII, a body)
Corporate; JOHN DOES 1-10, JANE)
DOES 1-10; DOE CORPORATIONS and)
DOE ENTITIES,)
Third-Party Defendants.)

DEPOSITION OF CLARENCE MOSES

Taken on behalf of Plaintiffs at the Law Offices of Ian L. Mattoch, 737 Bishop Street, Suite 1835, Honolulu Hawaii, commencing at 1:00 p.m. on March 17, 2006, pursuant to Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT B

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1 A. I was too busy running. Didn't keep track of
 2 time.
 3 Q. On the far right, it says, "Shallow water, medium
 4 water, and deep water." Those were all checked off.
 5 Do you know what that refers to?
 6 A. No. Because we found him in pretty deep water.
 7 Well, actually on the side of the ledge was -- he started
 8 from the beginning, he was kind of shallow in the
 9 beginning, because he was right on the side of the ledge.
 10 Q. That area where it's marked off, when you filled
 11 this out, I take it you filled these out many times?
 12 A. For this one, I don't think I filled this out.
 13 Q. This type of form, you filled out over the years?
 14 A. Yes.
 15 Q. What do you believe that, the "Shallow water,
 16 medium water, deep water" to mean?
 17 A. He was close to the ledge. In high or low tide,
 18 ledges come down at a slight angle. It doesn't drop off.
 19 It goes like this, gradually. As you get further away from
 20 the ledge, five, six feet, then it drops.
 21 Q. Is it safe to say that this "shallow, medium,
 22 deep water" refers to where the person was located and what
 23 the water depth was?
 24 MR. MAYESHIRO: Lack of foundation.
 25 A. All I can say, we did find him on the deep side,

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1 but not far from it.
 2 Q. Putting aside this incident, just this box. I'm
 3 trying to understand what it means when you check it off.
 4 A. Well, let me put it this way, then. When I seen
 5 him swimming around the point, he looked fine to me. Until
 6 you start to climb up the side. He tried climbing up and
 7 he fell down. Then I said -- I thought something was
 8 wrong, so I sent a guy out.
 9 As he went on the side -- if he was hanging on
 10 the side, it was shallow on the side on the reef. If he
 11 stood up, he could stand up. As he fell back, he drifted
 12 down into the deep side.
 13 Q. All right. But we'll get to that, the actual
 14 incident itself. But my question is with regard to when
 15 the lifeguard or whoever fills out these forms checks these
 16 off, does this refer to the place where the person was
 17 found? As far as how deep the water was?
 18 A. I would say, yeah.
 19 Q. So the fact that all three, Shallow, Medium, Deep
 20 are checked off, you're saying that your understanding is
 21 that at certain areas, it was all three, shallow, medium --
 22 A. Yeah, as it goes like this.
 23 Q. You're indicating like a slope?
 24 A. Yeah.
 25 Q. The weather condition on this form indicates

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1 "Partially, part cloudy"?
 2 A. Yes.
 3 Q. Would you agree with that?
 4 A. I can't remember the day. But if it's checked
 5 off, pretty much, that's what I would say.
 6 Q. And how about "variable winds."
 7 Would you agree with that? It looks like "3 to
 8 15" or "5 to 15."
 9 A. Hanauma Bay, you never know. It's always, the
 10 wind is always swirling, so most of the time, you -- it can
 11 get variable.
 12 Q. And do you remember what the ocean conditions
 13 were like that day?
 14 A. I would say it was like a regular day. Not super
 15 choppy, but it was a little choppy.
 16 Q. Did you perform CPR on the first body that was
 17 found?
 18 A. I don't know, that one. I'm not too sure.
 19 Q. Why don't we just go to the day of the accident.
 20 You were working at 3 Alpha, Tower 3 Alpha,
 21 right?
 22 A. Right.
 23 Q. And tell me what you first saw with regard to
 24 these two individuals, like how it all first began.
 25 A. Well, like I said, I was sitting in the tower,

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1 looking out. And off the corner of my eye, I seen somebody
 2 swimming around Witches Brew Point.
 3 He swam a little bit past the point. Well, to
 4 me, he was swimming fine. He knew how to swim.
 5 And then I seen him try to climb out to the side
 6 of the ledge, grab on and climb out. But when he grabbed
 7 on, he was hanging and he just dropped. He just let go,
 8 because I guess he was too weak or whatever.
 9 But as soon as I seen them, it struck me as kind
 10 of wrong. That day it was Daniel Neves was my partner.
 11 He was at the bottom. I told him, Go. Usually,
 12 I tell the guys about scenarios, in case of drownings, just
 13 go. Get your stuff. When I say go, just go.
 14 He took off. Got all his gear, and he took off,
 15 running. When he was running, I watched the guy; he tried
 16 to climb up again. Wait a little while, he was hanging a
 17 little bit, and he dropped again.
 18 At this time, when I looked across, Neves had
 19 reached the end of the beach.
 20 Q. Okay.
 21 A. I went back to the guy. I was watching and
 22 waiting for him to swim. And I didn't see no swimming.
 23 But before all of that happened, I did call the supervisor
 24 that there was a possible rescue enroute. So he came
 25 across.

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1 And by the same time, I looked again, I waited 30
 2 seconds, and I didn't see anything, I kind of knew that he
 3 wasn't going to be swimming again. So I took off running
 4 with the equipment.

5 Q. This whole time you're indicating with your hands
 6 that you're holding binoculars?

7 A. Yes.

8 Q. You first saw him swimming, and this was with
 9 binoculars?

10 A. At first, I seen him with my eye. After that,
 11 when he tried to climb up, then I grabbed my binos.

12 Q. Why did the first sighting catch your eye?

13 A. Anybody who swims with a high arm, you can kind
 14 of see the arm. Looked like he was swimming regular to me.
 15 It didn't really catch -- give my any kind of warning until
 16 he tried to climb up the side. And then he -- when he let
 17 go, I knew something -- usually people can hang on for a
 18 long while, at least swim back. But he just dropped
 19 straight down.

20 Q. Were there other swimmers in the area where he
 21 was swimming?

22 A. At that time, no.

23 Q. So after you saw like, he dropped the third
 24 time, was it?

25 A. Second time.

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1 possible drowning?

2 A. No, possible Condition 5. Condition 4, meaning
 3 resuscitation. It was a possible. But I called him
 4 anyway, just I didn't want to take any chances.

5 Q. What is a Condition 5?

6 A. Well, that's wrong. We'll get a Condition 4 on
 7 him. That means resuscitation. Meaning victim, no pulse,
 8 no breathing.

9 So since he was kind of sketchy, I called for
 10 quick backup. He'll rush more if you give him Condition 4
 11 than Condition 2. Condition 2 means minor First Aid.

12 Q. What is Condition 3?

13 A. Patient with not breathing but a pulse. But it's
 14 still emergency.

15 Q. Do you know what a Code 5 is?

16 A. No. Once in a while, we get mixed up between 4
 17 and 5. That's the only thing I can say about that one.

18 Q. After that, you saw the guy drop a third time,
 19 right?

20 A. No, he only dropped two times.

21 Q. Sorry. And you saw Neves was at the end of the
 22 beach. Then what happened?

23 A. Then, like I said, I was watching, hoping he
 24 would be floating, slapping his arms maybe, trying to stay
 25 afloat. Neves didn't get there in time. I waited and

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1 Q. Is that when you started --

2 A. That's when Neves hit the end of the beach. I
 3 was still watching, because I was hoping he would pop up
 4 again, and by then, Neves -- another minute or so, he could
 5 have grabbed him. I was kind of hoping that he wasn't that
 6 tired. I was kind of hoping for the best. But I figured
 7 if I take off running now, and he grabs him, and he's okay
 8 then, you know, I can take my time instead of just run out.

9 Q. Now, you said Neves had -- at the point, where
 10 the body dropped down a second time, Neves was at the end
 11 of the beach. He still had to run down the ledge?

12 A. Yeah, run up the ledge.

13 Q. And then you were following him the whole time
 14 with the binoculars?

15 A. Not him. The swimmer. I just looked over, and I
 16 seen him, then I went back to the swimmer.

17 Q. Were you guys in contact via radio?

18 A. No, we only got two radios down there, two
 19 towers. We can't be running the radios around. He took
 20 off. I told him took off, and I had the radio, because I
 21 knew the lieutenant, whoever was supervisor, lieutenant,
 22 was on his way already.

23 Q. Was that Bregman?

24 A. I think so, yeah.

25 Q. So you had already alerted Bregman there was a

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1 Neves -- he was almost there. I was still watching. I
 2 didn't see no arms. I didn't see anything at all. Nothing
 3 floating, whatever.

4 When he got there, he was looking around, and I
 5 kind of knew, so I dropped my -- grabbed my stuff, grabbed
 6 my equipment and took off running.

7 Q. What equipment did you take?

8 A. Usually, I just carry the O2, First Aid.

9 Q. Do you know what Neves took with him?

10 A. He took his basic tube, fin, mask, snorkel fins
 11 and tube. I needed him to get out there, quick. The guy
 12 who runs with the less equipment gets there quicker.
 13 That's why the second guy carries all the bulky stuff. It
 14 takes a little longer.

15 Q. You said you didn't see anything, meaning that
 16 the body had dropped under water?

17 A. He was at water level. I didn't see no arms,
 18 like swimming. So that indicated that he wasn't exactly
 19 trying to stay afloat. But at the same time, I didn't know
 20 if he was face up or face down. I couldn't see him. It
 21 was basically he could have been anywhere at the time.

22 Q. So then you were running out at this point to
 23 meet --

24 A. Neves went in. Just before -- well, just before
 25 I started running to grab my stuff, Bregman drove by with

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1 the truck.

2 Q. Okay.

3 A. He went down to the end. And -- well, he didn't
4 stop to pick me up. He kept on going. I had to run all
5 the way behind everybody.6 By the time running out, Neves jumped in. And
7 when I reached end of the beach, finally grabbed the guy,
8 started swimming him towards the ledge.9 Q. Do you remember how far out from the ledge Neves
10 was when he found the body?

11 MR. MAYESHIRO: Calls for speculation.

12 THE WITNESS: Answer?

13 MR. MAYESHIRO: You can answer if you know.

14 A. Thirty feet about, give or take.

15 Q. And then what happened?

16 A. Well, tubed him, brought him in, put him on the
17 ledge, started CPR.

18 Q. Neves did the CPR?

19 A. I don't know who started CPR. But Witches Brew
20 is every time -- you take anybody out of there, it's always
21 hard to bring the guy out, because of the terrain. It's
22 not easy. We had to find a spot to bring him out. He was
23 pretty heavy. It took at least three of us. We had a hard
24 time, just three of us, alone.

25 Q. Three of you pulled him out of the water?

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1 A. Yes.

2 Q. Is it your understanding that that was Erik --
3 Jim Laughlin?

4 A. I don't know who he is.

5 Q. You don't remember the name?

6 A. No.

7 Q. Or you didn't know the name?

8 A. Oh, I had somebody there, but I didn't know his
9 name.10 MR. MAYESHIRO: She's talking about the name of
11 the patient.

12 A. Oh, the patient?

13 Q. So it was you, Neves, Bregman.

14 Was there anybody else who helped?

15 A. Well, I had this one guy was giving me a hand,
16 but he was just running out an extra bottle. He was behind
17 me.

18 Q. Was it an extra bottle of what?

19 A. O2.

20 Q. Do you remember who that was?

21 A. No, he was somebody off the beach. He just said,
22 Do you need a hand? He grabbed that and followed me a
23 the way out. He just dropped it off.

24 Q. You don't remember his name?

25 A. No.

1 Q. You personally did not perform CPR on this person?

2 MR. MAYESHIRO: Objection. Misstates testimony.

3 A. More than likely, I would have.

4 Q. Oh, you did? You don't know?

5 A. I would have. Because we had three of us there.

6 After -- as you go on, we need to put our stuff on, BSI and
7 all that. Especially when the first two guys are there,
8 they are not really putting anything on. They are just
9 working on the guy.

10 Q. What do you mean, "putting anything on"?

11 A. BSI gloves. We need gloves, glasses, protective
12 wear, that we need.

13 Q. What does "BSI" stand for?

14 A. Body Substance Isolator, or something like that.
15 So you don't get any kind of gook on your hands and touch
16 your eyes or whatever.

17 Q. So you said you were putting that on?

18 A. Yeah, everybody puts it on. That's part of what
19 the training that we do. Everybody puts gloves. Trying to
20 stay substance aware, body fluids and all that kind of
21 stuff.

22 Q. Did you guys take turns giving CPR?

23 A. Yeah, I would say so, yeah.

24 Q. Do you remember?

25 A. Not really, offhand.

1 Q. That's what you would normally do in a rescue?

2 A. In order for the other guy to get his gloves off,
3 he'll have to jump off the head or chest and somebody else
4 jumps in, and he puts on his stuff.5 Q. Do you remember approximately how long you
6 administered CPR?

7 A. Well --

8 MR. MAYESHIRO: Calls for speculation.

9 A. Time is not part of the brain. Just the name of
10 the game is get the guy, pump him up, do CPR. Wait for an
11 ambulance. Transport as fast as we can.12 Q. On the incident report, it indicates 25 minutes
13 that CPR was performed.

14 Does that sound unusual?

15 MR. MAYESHIRO: Vague and ambiguous.

16 A. No.

17 Q. Then after you were performing CPR, what happened
18 with the body? What did you guys do?19 A. We did CPR all the way to the ambulance. The
20 ambulance came. Got the guy on the stretcher. Put
21 everything together for transport. Walked the guy in.22 Carried out the equipment and tried to do CPR, the best we
23 can. Got him on the ambulance, and the ambulance took off24 Q. And then can you remember about the lapse of
25 time? You just said that time wasn't really a factor.

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1 Do you have any idea from the time you saw him to
 2 the time the ambulance took him away, how long that lasted?

3 A. No.

4 Q. I'm going to show you what I'll mark Exhibit 3.
 5 (Whereupon, a Major Incident Report and Safety
 6 Form was marked as Exhibit 3 for Identification.)

7 BY MS. WATERS:

8 Q. This is Exhibit 3. This is your handwriting?

9 A. Yes.

10 Q. And you gave this statement after this incident?
 11 (Pause.)

12 Q. You wrote that?

13 A. Yeah.

14 Q. Before I go into the statement, after the
 15 ambulance took away the first body, there was a second
 16 drowning, right?

17 A. Well, we didn't find out until later on.

18 Q. Tell me what happened after that ambulance left
 19 and the next --
 20 A. Nobody had an ID on the guy.
 21 Q. The first guy?
 22 A. The first guy. So we didn't know what, who. So
 23 we got -- we was asking people. As we walked out,
 24 everybody walking, ask anybody about description or anybody
 25 fitting this description.

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1 As we walked down, this lady said, That sounds
 2 like my brother-in-law.

3 Q. Do you remember what she looked like?

4 A. No.

5 Q. Did she say that to you?

6 A. No. She said it to somebody else. Because we
 7 had, I think, a couple of guys. Park rangers were asking
 8 too. We were trying to get something.

9 So then I heard, oh, somebody said somebody that
 10 he was with -- we started talking for a while, dah, dah,
 11 dah. And time went by, they said, Oh, he was with -- his
 12 brother-in-law or husband was with him.

13 Q. Okay.

14 A. By then, I was just -- we were like, That was
 15 kind of, uh-oh, we're missing something else. We wasn't
 16 too sure if they were both at the same place or did they
 17 head off one way, head off the other.

18 So at the same time, I was calling for R-2,
 19 Rescue 2. That's the jet ski that does the patrol. They
 20 are mobile. I called them up to come down and to assist in
 21 the search and rescue.

22 Q. And then?

23 A. So I was thinking like -- if he's floating, maybe
 24 I can see him from on top of the hill, meaning on top of
 25 Hanauma Bay. So I had one of the rangers drive me up on

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1 top with a pair the binos to look down from top.

2 Q. Did you have your radio with you?

3 A. Yeah. I think I did. Yes, I had a radio.

4 Q. And then what?

5 A. They drove to the top, went all the way to one
 6 end.

7 Q. Do you know who drove you up to the top?

8 A. One of the rangers. I think his name was Jeff.
 9 His last name, I don't know. We went up the hill. As we
 10 were looking down, everything looks okay. Didn't see much
 11 of anything with the eye.

12 As we got around to the top, we had to find a
 13 spot to stop and to look over the bushes into Witches Brew.
 14 And -- I missed one section.

15 As we were coming up the hill to just about the
 16 top of the entrance of Hanauma Bay, not the top entrance,
 17 but the bottom entrance, I passed the rescue guys.

18 Q. The jet ski guys?

19 A. Yes. And I told them, Just launch and just go
 20 out and take a look. I didn't say where. I said, Just go
 21 out and take a look. Just get in the water and go.

22 I went up the hill. And when I got up to the
 23 top, I looked down into the Brew. Then I seen the guy from
 24 on top. Called with the radio.

25 Q. Where was he?

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1 A. Witches Brew. Inside Witches Brew. In the
 2 middle. He was further in the middle, where the rubbish
 3 line was. From that view, he was under water.

4 So as I came down, I forgot the guy, I called in
 5 the guy's in the Brew. That's where you guys got to go.
 6 And that was it. I came around with the ranger. Came back
 7 down the hill.

8 And since by the time I got in, they came in with
 9 the jet ski already, and the other guys was working on the
 10 second guy.

11 Q. Was the jet ski already in the water when you
 12 sighted the second body?

13 A. No.

14 Q. It had not yet launched?

15 A. No.

16 Q. Did you see it actually launch and go out?

17 A. Yeah.

18 Q. And do you know approximately how long from the
 19 time it launched to where they found the body, how long
 20 that took?

21 MR. MAYESHIRO: Calls for speculation.

22 A. Try that one again.

23 Q. How much time lapsed from when they launched to
 24 when they found the second body?

25 MR. MAYESHIRO: Same objection.